

RICHARD M. LADE, AS ATTORNEY IN FACT
FOR C. W. CLARKE COMPANY

IBLA 70-4

Decided December 29, 1970

Exchanges: Forest Exchanges -- Scrip: Recordation -- Scrip: Special
Types of Scrip -- Scrip: Validity

A forest lieu selection right is extinguished when the base lands are reconveyed by the United States to the principal. The purported agent or assignee of the principal has no rights thereafter against the United States even if he recorded his power of attorney and other selection documents prior to the reconveyance.

RICHARD M. LADE, AS ATTORNEY IN FACT : Forest lieu selection
FOR C. W. CLARKE COMPANY : application rejected

: Affirmed

DECISION

Richard M. Lade has appealed to the Secretary of the Interior from a decision by the Chief, Branch of Land Appeals, Office of Appeals and Hearings, Bureau of Land Management, dated November 21, 1967, affirming an Oregon land office decision of January 11, 1967, rejecting a forest lieu selection application filed by him as attorney in fact for the C. W. Clarke Company on the ground the selection right is no longer valid.

The issue raised by this appeal is whether the Bureau was correct in concluding that a reconveyance by the United States by quitclaim deed to the C. W. Clarke Company on January 18, 1957, of the base lands (the SE 1/4 NW 1/4 sec. 35, T. 14 S., R. 28 E., M.D.M., California), satisfied the selection right, thus abrogating any right in the appellant to select lands in lieu of those base lands. The answer is that it was.

Appellant points out that the documents evidencing his selection right were recorded by the Bureau on May 31, 1956, pursuant to the Scrip Recordation Act of August 5, 1955, 69 Stat. 534, noted at 43 U.S.C. § 274 (1964), which was prior to the issuance of the quitclaim deed. He contends that the issues in this case are similar to those involved in Udall v. Battle Mountain Company, 385 F.2d 90 (9th Cir. 1967), cert. denied 390 U.S. 257 (1968) except that in Battle Mountain the quitclaim deed of the base lands to the principal was issued prior to the recordation of the selection right documents.

The factual difference as to whether the documents were recorded prior to or after the issuance of the quitclaim deed of the base lands, however, is not significant. The United States Court of Appeals for the Ninth Circuit in Lade v. Udall, Civil No. 23,355 (September 25, 1970), affirmed Lade v. Udall, 295 F. Supp.

265 (D. Ore. 1968), upholding the departmental decision Richard M. Lade, as Attorney in Fact for Santa Fe Pacific Railroad Company, A-29121 (January 10, 1963), where the facts were similar to those here. The Court of Appeals refused to distinguish its previous ruling in the Battle Mountain case because of the recording there of the selection documents before the reconveyance. ^{1/} It followed the holding in Battle Mountain that the United States is not required to recognize assignments or assignees of the forest lieu selection rights, that the reconveyance of the base lands to the principal extinguished any rights to lieu selection, and that the Scrip Recordation Act of August 5, 1955, created no new obligation on the part of the United States to respect assignments so recorded or to deal with the purported assignees. The Court's ruling controls the disposition of this case.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision is affirmed. ^{2/}

Joan B. Thompson, Alternate Member

I concur:

I concur:

Martin Ritvo, Member

Anne Poindexter Lewis, Member

^{1/} A dissent by Judge Trask, however, would make such a distinction.

^{2/} In Richard M. Lade, as Attorney in Fact for Santa Fe Pacific Railroad Company, IBLA 70-5, decided today, another forest lieu selection application was rejected for the same reason.

